



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

April 19, 2011

Colonel Alfred A. Pantano, Jr.
District Engineer
Department of the Army
Jacksonville District Corps of Engineers
Attn: Garrett Lips
4400 PGA Boulevard, Suite 500
Palm Beach Gardens, Florida 33410

Subject: Florida Department of Transportation; 2011-00926 (IP-GGL)

Dear Colonel Pantano:

This letter is in response to permit application number 2011-00926 (IP-GGL) submitted by the Florida Department of Transportation. The applicant proposes to permanently impact 90.26 acres of freshwater wetlands and 0.50 acres of waters of the United States. The total project site is 378.96 acres in size and contains 90.26 acres of wetlands. The purpose of the project is to improve vehicular access to the Southwest Florida International Airport by constructing a new terminal access road. The onsite wetlands can be characterized as 42.59 acres of hydric pine flatwoods (*Pinus elliottii*), 18.23 acres of cypress (*Taxodium spp.*), 11.01 acres of wet prairie, 9.88 acres of disturbed lands, 5.94 acres of exotic wetland hardwoods, 1.15 acres of melaleuca (*Melaleuca quinquenervia*), 0.69 acres of wetland forested mix, 0.60 acres of freshwater marsh, and 0.17 acres of cypress/pine/cabbage palm mix. The proposed work is located on the east side of Interstate 75, one mile north of Alico Road, in Sections 2, 3, 10, 15, 27, 34 and 35, Township 45 South, Range 25 East, Lee County, Florida.

A portion of the proposed wetland impacts will occur within hydric pine flatwoods. We consider hydric pine flatwoods systems to be aquatic resources of national importance (ARNI), because they are threatened habitats that provide nesting, resting, and feeding sites for a wide variety of wildlife species. Hydric pine flatwoods of south Florida are unique areas that provide essential forested habitat for wildlife including the wood stork (*Mycteria americana*), red-cockaded woodpecker (*Picoides borealis*), eastern indigo snake (*Drymarchon corais*), gopher tortoise (*Gopherus polyphemus*), bald eagle (*Haliaeetus leucocephalus*), bobcat (*Lynx rufus*), Florida sandhill crane (*Grus canadensis pratensis*), and 900 native plant species including 80 rare and endemic species. Additional benefits include filtering upland runoff, stabilizing sediments, and taking up nutrients which help to improve the quality of nearby waters. Hydric pine flatwoods are rare outside south Florida, but are of critical, regional importance as one of the dominant forest cover types in south Florida. This geographically limited, subtropical habitat type has seasonal hydrologic variation, which results in a habitat with the highest plant diversity

of any in south Florida. Despite the importance of this habitat type, south Florida hydric pine flatwoods are among the least protected lands in Florida, with only nine percent in public ownership. Regionally, the loss of hydric pine flatwoods habitats of south Florida will critically affect the biodiversity and endemic flora and fauna of south Florida (U.S. Fish and Wildlife Service, 1999). For these reasons, the Environmental Protection Agency (EPA), Region 4 considers these hydric pine flatwoods to be ARNI.

Proposed direct and indirect impacts will also occur with cypress wetlands. We consider cypress wetlands to also be ARNI, because they provide nesting, roosting, and feeding sites for a wide variety of wildlife species. Cypress wetlands of south Florida are unique areas that provide essential forested habitat for wildlife including the wood stork (*Mycteria americana*), eastern indigo snake (*Drymarchon corais*), bald eagle (*Haliaeetus leucocephalus*), wood duck (*Aix sponsa*), barred owl (*Strix varia*), and raccoon (*Procyon lotor*). In addition, cypress wetlands filter upland runoff and provide groundwater recharge of the aquifer when the adjacent water table drops during drought periods (U.S. Fish and Wildlife Service, 1999).

EPA, Region 4 has completed its review of this project from information contained in the public notice (PN). This letter summarizes EPA's position on the project, concentrating especially on Section 404(b)(1) Guidelines, which prohibit avoidable or significant adverse impacts to the aquatic environment.

In order to fully review the proposed project, EPA requests that the applicant provide information on alternative site locations that have been reviewed which would have less adverse impacts on the aquatic environment. Section 230.10(a) of the 404(b)(1) Guidelines states that no discharge of dredge and/or fill material (into waters of the United States, including wetlands) shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic environment, provided the alternative does not have other significant adverse environmental consequences. This regulation further states that for non-water dependent projects, practicable alternatives that do not involve special aquatic sites are presumed to be available. Practicable alternatives are those that are "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purposes." Therefore, EPA requests that the applicant provide this office with the following information for each site examined:

- a. Presence, quantity and quality of wetlands;
- b. County and/or city zoning;
- c. Each land parcel's availability for purchase, and a determination of whether the proposed cost is reasonable;
- d. The presence or absence of any federally listed plant or animal species and/or historical properties; and
- e. The presence or absence of high value uplands.

According to the PN, the project was minimized to the maximum extent possible that would achieve the project purpose, and all practical efforts were made to minimize and avoid

wetland impacts. EPA requests that the applicant provide this information on measures that have been taken to avoid and minimize onsite wetland impacts. According to the Clean Water Act (CWA) Section 404(b)(1) Guidelines and February 6, 1990, Memorandum of Agreement between the U.S. Army Corps of Engineers (Corps) and EPA in determining mitigation, an applicant must demonstrate avoidance and minimization of wetland impacts before compensatory mitigation can be considered. Specifically, no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem. Practicable alternatives include activities which do not involve the discharge of dredged or fill material into waters of the United States. EPA also requests that the applicant provide construction drawings of the project in order to determine if any additional avoidance and minimization measures can be implemented.

The applicant's proposed mitigation consists of providing funds to the Lee County Conservation 20/20 program for the purchase of lands within the Estero Bay Basin. Since avoidance and minimization have not been adequately demonstrated, it is premature for EPA to consider any type of mitigation plan. In the event that avoidance and minimization are demonstrated in the future, EPA requests that the applicant provide the following information in order to demonstrate that the onsite mitigation proposed is appropriate to offset project impacts. This information is necessary in order to ensure the proposed mitigation for impacts associated with the project are in compliance with the Federal Compensatory Mitigation Rule, dated April 2008:

- a. Detailed mitigation and maintenance plan;
- b. The responsible party for the long-term management of the mitigation area;
- c. Assurance for the long-term protection of the mitigation area (such as a perpetual conservation easement);
- d. Detailed performance standards to achieve mitigation success;
- e. Detailed monitoring requirements;
- f. Detailed long-term management plan;
- g. Detailed adaptive management plan;
- h. Documented financial assurance to insure the mitigation site is maintained in perpetuity; and
- i. Detailed description of the net benefit the proposed mitigation will provide to the environment.

EPA requests that the applicant provide information on the primary, secondary, and cumulative effects the project may have on the surrounding wetlands. The proposed project is located within the Estero Bay Watershed, and may have an adverse and unacceptable impact on surrounding wetland systems. This information should also include an evaluation of potential impacts associated with the expansion of the to the Southwest Florida International Airport.

EPA also requests that the Corps have the applicant provide this office with the Uniform Mitigation Assessment Method (UMAM) scores for the proposed impact and mitigation sites.

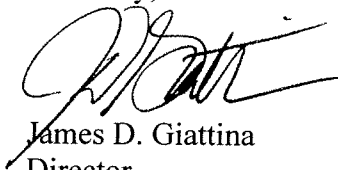
The UMAM scores should also include an explanation of how scores were determined based on existing and post-project conditions.

Finally, EPA requests that the applicant demonstrate that post-project nutrient loads will not exceed pre-project loads. We have concerns in reference to the potential water quality degradation associated with the project. The State water quality certification under Section 401 of the CWA has not been issued for the project. As described in the record of decision for the *Final Environmental Impact Statement On Improving the Regulatory Process in Southwest Florida, Lee and Collier Counties, Florida* (FPEIS), the Estero Bay Watershed has experienced overall degradation since the 1960's. The water quality of the Estero Bay Watershed has declined because of wastewater inputs, storm water run-off and increased nutrients from tributaries.

Based on the above observations, EPA has determined that the project, as currently proposed, does not comply with the Guidelines. EPA finds this project may have substantial and unacceptable adverse impacts on ARNI. Therefore, we recommend denial of the project, as currently proposed. This letter follows the field level procedures outlined in the August 1992 Memorandum of Agreement between the EPA and the Department of the Army, Part IV, paragraph 3(a) regarding Section 404(q) of the CWA.

Thank you for providing an opportunity for EPA to comment on this authorization. We look forward to receiving more information from you. Please copy EPA if the permit and statement of findings are issued for this project. If you should have any questions, please contact Ron Miedema at 400 North Congress Avenue, Suite 120, West Palm Beach, Florida 33401 or by telephone at (561) 616-8741.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Giattina', with a stylized flourish at the end.

James D. Giattina
Director
Water Protection Division

cc: Mr. Paul Souza, FWS
Mr. Mark Sramek, NMFS
Mr. Jim Beever, SWFRPC

References:

U.S. Army Corps of Engineers, 2003, "*Final Environmental Impact Statement on Improving the Regulatory Process in Southwest Florida, Lee and Collier Counties*", Jacksonville District, Florida.

U.S. Fish and Wildlife Service, 1999, *South Florida Multi-Species Recovery Plan*. Southeast Region, Atlanta, Georgia.